

REMARKS

Receipt of the Final Rejection mailed January 26, 2010 is hereby acknowledged.
Reconsideration and withdrawal of the rejections in view of the foregoing amendments and the following remarks is respectfully requested.

Amendments

Claim 1 has been amended to recite that the concentrate consists of one or more ω -3 fatty acid and polysorbates. This amendment is supported, *inter alia*, at page 6, lines 19-24.

Dependent claims 25-28 have been amended to conform with the amendments to claim 1.

Claims 19 and 21, which have been withdrawn from consideration, have been amended in conformity with claim 1 so that they can be rejoined to the elected claims upon allowance of those claims.

Claims 20, 22-24, 29-34, and 36-43 have been cancelled without prejudice.

No new matter has been added.

Rejection under § 112

The Examiner has rejected the claims under 35 U.S.C. § 112, first paragraph, as allegedly not enabled. The Examiner asserts the specification does not enable the production of a concentrate consisting of the recited components – as opposed to comprising the recited components. According to the Examiner, “[i]t is not seen that the concentrate of all the ingredients of the claims is contemplated without diluents” (Office Action, p. 7). Applicant traverses.

First, the presently pending claims recite a concentrate consisting of one or more omega-3 fatty acids and a surplus amount of a polysorbate. Whether or not “a concentrate of the claims is contemplated without diluents” is not seen to be pertinent to the question of enablement. Moreover, an example of such a concentrate is provided at page 6 (as part of example 1), addressing the Examiner’s concerns. Thus, Applicant requests withdrawal of the § 112 rejection.

Prior Art Rejections

Claims 1, and 25-27 have been rejected under 35 U.S.C. § 103(a) as allegedly being anticipated by Hirsh , U.S. Patent No. 3,052,608 (“Hirsch”), or, in the alternative, under 35 U.S.C. § 103(a) as allegedly unpatentable over Hirsch in view of excerpts from the Merck Index (“Merck”), Wikipedia, or Conklin, U.S. Patent No. 6,444,253 (“Conklin”).

Claims 1, 27, and 38-42 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Echols, et al., U.S. Patent Publication No. 2004/0142038 (“Echols”).

Claims 1, 25-40, and 43 were also rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Conklin.

Applicant respectfully traverses these rejections.

The presently claimed invention, the concentrate consists of an ω -3 fatty acid and a surplus amount of a polysorbate, wherein the ratio of ω -3 fatty acid to polysorbate is no greater than 3:7 by weight, wherein the ω -3 fatty acid is micelled such that the individual micelles have a size not greater than about 40 nm.

With respect to the § 103(a) rejection over Conklin, the Examiner acknowledges that Conklin fails to disclose the use of ω -3 fatty acids, but asserts that:

“if one wanted to enhance the nutritive content of an essential oil, it would have been obvious to include omega fatty acids as an essential nutrient.”

(Office Action, p. 6). Applicant respectfully traverses.

Conklin describes an anhydrous flavor delivery system combining 10-40 % of a flavoring composition, 20-50 % of a surfactant system, 20-50 % of an alcoholic composition and up to 10% of other additive(s) (column 2, line 64 to column 3, line 8). The flavorant can be an essential oil (column 4, line 11). Conklin does not described the use of omega fatty acids. By contrast, the presently claimed invention recites a concentrate consisting of an ω -3 fatty acid and a surplus amount of a polysorbate, wherein the ratio of ω -3 fatty acid to polysorbate is no greater than 3:7 by weight.

Thus, Conklin’s system has a minimum of three components: (1) a flavoring composition; (2) a surfactant system, and (3) an alcoholic composition (a fourth component is optionally present). The presently claim composition consists of two components: an ω -3 fatty acid and a polysorbate. Nothing in Conklin teaches or suggests the use of a two component system. Thus, even if the Examiner were correct that it would have been obvious for a person of skill in the art to add an omega-3 fatty acid to Conklin’s system (and Applicant does not concede that it would have been), the person of skill in the art would not arrive at the presently claimed, two-component system.

Starting from the disclosure of Conklin, in order to arrive at the presently claimed invention , a person skilled in the art would first have to replace an the flavoring component recited by Conklin with an omega-3 fatty acid which is not even mentioned in the document. Second, the alcoholic composition required by Conklin would have to be omitted. Finally, Conklin’s surfactant content would have to be increased.

Nothing in Conklin teaches or suggests making any of these changes. In fact, Conklin teaches that the addition of the alcoholic composition is essential for the system. As disclosed at column 3, lines 15-21, the anhydrous flavor delivery system is a microemulsion having an alcoholic continuous, outer phase and an inner phase constituted by the flavoring composition. In addition, Conklin stresses the importance of choosing suitable alcohols, as only alcohols with at least two hydroxygroups per molecule can be successfully used in producing the anhydrous flavor delivery system (col. 3 , lines 50-54).

In view of the foregoing, withdrawal of the § 103(a) rejection over Conklin is respectfully requested.

Turning to the rejections over Hirsh, Hirsch discloses an aqueous lanolin solution comprising lanolin, water, and Tween 60. Hirsch does not disclose – or even hint at – the use of ω -3 fatty acids. Nor does anything in any of the secondary references (Wikipedia, Conklin, or Merck) cure this deficiency. As such, the rejections over Hirsch, either alone or in combination with other references, should be withdrawn.

With respect to the § 103(a) rejection over Echols, that reference also fails to disclose the use of omega-3 fatty acids, a deficiency not cured by either Wikipedia or Merck. Thus, this rejection should also be reconsidered and withdrawn.

Conclusion

All objections and rejections have been complied with, properly traversed, or rendered moot. Thus, it now appears that the application is in condition for allowance. Should any questions arise, the Examiner is invited to call the undersigned representative so that this case may receive an early Notice of Allowance.

Favorable consideration and allowance are earnestly solicited.

Respectfully submitted,

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